HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

A.O. No. 378/01

Old No. 821 of 1991

Shiv Sagar Tripathi.

Vs.

Prem Singh

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 23.09.2004

Initial of Judge

In the High Court of Uttaranchal, at Nainital.

A.O. 378/2001

Shiv Sagar Tripathi and others …Appellants.

Vs.

Prem Singh and another …Respondents.

Dated: 23-9-2004

Hon'ble Rajesh Tandon, J.

By the impugned order the amount given to the applicant as exgratia amount on account of the accident having occurred has been deducted from the compensation amount.

Briefly stated the facts of the case are that the accident occurred on 20-6-1988 while the deceased Smt. Harpyari was going to Badrinath in vehicle No. USQ 918. When the vehicle reached near Bachhelikkhal at about 5.30 p.m. on 20-6-1988 due to the rash and negligent driving of the driver of the vehicle, it met with an accident and in the accident Smt. Harpyari Devi along with other co-passengers died on the spot. On her death her heirs filed claim petition before the Motor Accident Claim Tribunal/ District Judge Tehri Garhwal. The Tribunal awarded total compensation of Rs. 32,900/- and deducted Rs. 25000/- received by the claimants from the State of U.P. as exgratia payment and after deducting the aforesaid sum of Rs. 25000/- the Tribunal awarded Rs. 7,400/- against the United India Insurance Company.

It has been held by the Apex Court on 2002 A.I.R. SCW 2920 United India Insurance Co. Ltd. etc. etc. Vs. Patricia Jean Mahajan and others etc. etc. that any amount received from any other resources can not be deducted. The observations are quoted below:

> "*We are in full agreement with the observations made in the case of Helen Rebello (Supra) that principle of balancing between losses and gains, by reason of death, to arrive at amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have*

come correlation with the accidental death by reason of while alone the claimants have received the amounts. We do not think it would be necessary for us to go into the question of distinction made between the provisions of the Fatal Accident Act and the Motor Vehicles Act. According to the decisions referred to in the earlier part of this judgment, it is clear that amount on account of social security as may have been received must have nexus or relation with the accidental injury or death, so far to be deductible from the amount of compensation. There must become correlation between the amount received and the accidental death or it may be in the same sphere, absence the amount received shall not be deducted from the amount of compensation. Thus, the amount received on account of insurance policy of the deceased can not be deducted from the amount of compensation though no doubt the receipt of the insurance amount is accelerated due to premature death of the insured. So far other items in respect of which learned counsel for the insurance company has vehemently urged for example some allowance paid to the children, and Mrs. Patricia Mahajan under the social security system no correlation of those receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund out of which payment on account. Of social security system is made one of the constituent of fund is tax which is deducted from income for the purpose. We feel that the High Court has rightly disallowed any deduction on account of receipts under the insurance policy and other receipts under social security system which the claimant would have also otherwise entitled to receive irrespective of accidental death of Dr. Mahajan. If the proposition " receipts from whatever source" is interpreted so widely that it may cover all the receipts, which may come into the hands of the claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act providing for just compensation on account of

accidental death. Such gains may be on account of savings or other investment etc. made by the deceased would not go to the benefit of wrong doer and the claimant should not be left worse of, if he had never taken an insurance policy or had not made investments for future returns.

Counsel for the appellants has submitted that there was no correlation in the insurance money and exgratia amount.

A perusal of the record shows that the award was made only to the extent of Rs. 32,900/-. The amount of compensation which has been awarded is very meager amount. The life being precious, the beneficial legislation having been framed to help the family of bread earner, any other amount having been earned from any other resources can not be deducted from the compensation amount of the appellants.

In view of the aforesaid the order passed by the claim tribunal dated 12-6-1991 so far as it relates to the deduction of the amount is quashed. The appeal is allowed in part. The entire amount of compensation shall be paid to the appellants along with 6% interest.

(Rajesh Tandon, J.)

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